

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

<p>CAROL S. MARCELLIN, individually, and as Co-Administrator of the Estate of Charles E. Hollowell, deceased, and JESSICA HOLLOWELL-McKAY, as Co-Administrator of the Estate of Charles E. Hollowell, deceased,</p> <p>Plaintiffs,</p> <p>v.</p> <p>HP, INC., and STAPLES, INC.,</p> <p>Defendants.</p>	<p>Civ. No. 1:21-cv-00704-JLS</p>
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**HP INC.’S STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant HP Inc., (“HP”) submits the following statement of undisputed material facts in support of its motion for summary judgment in accordance with Federal Rule of Civil Procedure 56(c)(1) and Local Rule 56(a)(1).

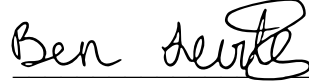
1. On February 7, 2011, HP sold an HP Pavilion dv6-3200 notebook computer (the “Computer”) to Defendant Staples, Inc. (“Staples”). Exhibit 1, HP’s Supplemental Answers to Plaintiffs’ Second Set of Interrogatories, Supp. Ans. No. 1.
2. Plaintiff Carol S. Marcellin (“Marcellin”) subsequently purchased the Computer from Staples. Exhibit 2, Marcellin Deposition Volume I, p. 69:12-16; Plaintiffs’ Answers to HP’s First Set of Interrogatories, Answer No. 10.
3. On March 5, 2011, Marcellin registered the Computer under her name at her home

- address in Ceres, New York. Exhibit 1, Supp. Ans. No. 2; Exhibit 3, Marcellin Registration Record, HP01417; Product Registration Data, HP01428-HP01438.
4. As sold by HP, the Computer was packaged with three manuals: (1) the Notebook PC User Guide (“User Guide”); (2) Notebook Essentials; and (3) the HP Pavilion dv6 Entertainment PC Maintenance and Service Guide (“Maintenance Guide”). Levites Decl. ¶ 2.
 5. The User Guide contained the following warning: “To reduce potential safety issues, use only the battery provided with the computer, a replacement battery provided by HP, or a compatible battery purchased from HP. Exhibit 4, Notebook PC User Guide, at HP00110.
 6. The User Guide also instructed users to refer to the HP website for information on ordering an authorized replacement battery. *Id.* at HP00116.
 7. The Notebook Essentials manual likewise warned users to only use replacement batteries “provided by HP” or “purchased as an accessory from HP.” Exhibit 5, Notebook Essentials, at HP00208-HP00210.
 8. The Maintenance Guide provided a list of authorized replacement batteries, with the spare part number for each. Exhibit 6, Maintenance Guide, at HP00294.
 9. These three manuals “provided extensive instructions on how to handle battery replacement, including spare part numbers for the eligible replacement batteries, how to carry out the replacement procedure, as well as additional sources for further information.” Levites Decl. 4 ¶ 2.
 10. Early in the morning of January 23, 2020, a fire broke out at the home that Marcellin shared with decedent Charles Hollowell (“Hollowell”) in Ceres, New York. Exhibit 9,

Complaint, ¶ 12.

11. Marcellin contends that she was awoken by the sound of her smoke detector and discovered a fire in her home office. Exhibit 2, pp. 160:5-7, 164:12-16.
12. After discovering the fire, Marcellin attempted to assist Hollowell in leaving the house but was unable to move him out of the bedroom. *Id.* at pp. 125:9-127:7.
13. Marcellin left Hollowell on the bedroom floor, went out to her car, and drove down the road so that she could call 911 using her vehicle's OnStar service. *Id.* at pp. 127:9-128:4.
14. Plaintiffs assert that Hollowell died before help could arrive. Exhibit 9, ¶ 14.
15. Plaintiffs assert that "the fire was caused by the overcharging, ignition and explosion of the lithium-ion battery in the laptop." *Id.* at ¶ 17.
16. At the time of the subject fire, the Computer contained a lithium-ion battery (the "Battery") that had a 2015 date code and was thus installed at least four years after Marcellin purchased the Computer. Levites Decl., ¶ 3.
17. According to Plaintiffs' own expert, the Battery was an unauthorized or counterfeit battery pack that was manufactured in 2015, more than four years after the Computer was manufactured, and was not the Computer's original battery pack. Exhibit 7, Expert Report of Steve Martin, p. 6.
18. Marcellin denies that she replaced the Computer's battery at any time and asserts that she does not know who replaced the battery in the Computer. Exhibit 8, Marcellin Deposition Volume II, pp. 8:14-9:10.

Respectfully Submitted,
HP INC.,
STAPLES, INC.,
By their attorneys,

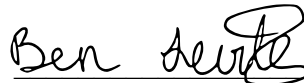


Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to all counsel of record on May 12, 2025.



Benjamin Levites